Remarks and Arguments

Claims 15-48 were pending in this application. Claims 35-37 and 46-48 were withdrawn from consideration. No claims have been amended or added.

In this Response, claims 35-37 and 46-48 have been cancelled without prejudice. Accordingly, claims 15-34 and 38-45 remain in the application.

Rejection Under 35 U.S.C. § 102

Claims 15, 17, 20-27, and 30-34 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,550,043 ("Beck"). The Examiner asserts that Beck discloses molding an intermediate plastic container product having a layered body and a moil integral with the body where at least one layer of barrier material extends part way into but not through the moil, removing an upper portion of the moil in which the barrier material is absent, and removing a lower portion of the moil in which the barrier material is present. Applicants respectfully traverse this rejection.

Both independent claims 1 and 38 reciting, among other steps, a method of making a plastic container comprising removing an upper portion of the moil in which the barrier material is absent and removing a lower portion of the moil in which the barrier material is present.

Applicants respectfully disagree that Beck describes making a plastic container using both steps of removing an upper portion of the moil in which the barrier material is absent and removing a lower portion of the moil in which the barrier material is present. In the passages of Beck used to support this rejection, Beck is describing two alternative methods of removing a moil. In a first method described at col. 7, ll. 9-22 and FIG. 14, a preform (e.g., FIG. 12) has an upper portion 120 that is to be separated from base portion 112 by removal of a portion 124 intermediate both portions 112 and 120. The preform has barrier layers 68 and 72 that lie completely within base portion 112. By separating the upper portion 120 from the base 112, the removed upper portion will be free of any barrier layers. Additionally, the removed intermediate portion 124 is also free of barrier layers. This method is distinguished from the claimed

invention in that it does not involve removal of any further portions, much less a further step of removing a portion of the moil in which the barrier material is present.

In a second method described at col. 7, ll. 23-40 and FIG. 15, a preform (e.g., FIG. 11) also has an upper portion 120 to be separated from base portion 112 by removal of material in the area 126 intermediate both portions 112 and 120. In contrast to the first method, barrier layers 68 and 70 extend from the base portion 112 and into the upper portion 120. Upon removal of portion 126, the removed upper portion 120 contains the barrier material, as does the removed portion 126. Unlike the claimed invention, nowhere does Beck describe performing an additional step of removing a portion of the moil in which the barrier material is absent.

Because Beck fails to describe a method involving removal of both an upper portion of the moil in which the barrier material is present and removing a lower portion of the moil in which the barrier material is present, Beck fails to disclose each and every limitation of independent claims 1 and 38 and thus, the respective dependent claims. Applicants respectfully submit that Beck does not anticipate the claimed invention and respectfully request withdrawal of this rejection.

Rejection Under 35 U.S.C. § 103

Claims 16, 18, 19, 28, 29, and 38-45 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Beck in view of U.S. Patent No. 5,804,016 ("Schmidt"). The Examiner admits that Beck does not describe cutting with a laser and turns to Schmidt for this disclosure. Applicants respectfully traverse this rejection.

Applicants respectfully submit that the combination of Beck in view of Schmidt fail to teach or suggest each of the limitations of the claimed invention. Beck does not teach or suggest of removing two moil portions, in which one removed moil portion contains barrier material whereas the other removed moil portion contains barrier material. In a first method, Beck describes removing only removing a moil portion in which the barrier material is absent (FIG. 14), whereas in a second method Beck describes only removing a moil portion in which the barrier material is present. There is no teaching or suggestion that would indicate to one of ordinary skill in the art that a

second removing step would be necessary or desirable. Schmidt fails to remedy this deficiency as the only passages in Schmidt relevant to forming a container via a moil is limited to Schmidt's description of Beck's method at col. 9, ll. 18-39. Thus, Schmidt suffers the same deficiencies in Beck in failing to teach both claimed steps of removing an upper portion and lower portion of the moil.

The claimed invention is superior to the method of Beck in that the upper portion of the moil that is removed is free of any barrier material. This removed portion can be recycled as process regrind as it does not contain the barrier material; the undesirable presence of barrier material would hamper recycling efforts of the removed moil portion. (See specification at p. 1, ll. 17-19 and p. 4, ll. 9-11.) Additionally, the second removal step, in which barrier material is present in the removed moil portion, results in a container in which the barrier layer extends through the entirety of the container, which is desirable. (*Id.* at p. 1, ll. 14-17.) These combined advantages in a single method of forming a container are nowhere to be found in the teachings of Beck and Schmidt.

Applicants respectfully submit that the claimed teachings of Beck and Schmidt fail to teach or suggest the claimed invention. Accordingly, Applicants respectfully request withdrawal of this rejection.

Reconsideration

It is believed that all claims of the present application are now in condition for allowance.

Reconsideration of this application is respectfully requested. If the Examiner believes that a teleconference would expedite prosecution of the present application the Examiner is invited to call the Applicant's undersigned attorney at the Examiner's earliest convenience.

Any amendments or cancellation or submissions with respect to the claims herein is made without prejudice and is not an admission that said canceled or amended or otherwise affected subject matter is not patentable. Applicant reserves the right to pursue canceled or amended subject matter in one or more continuation, divisional or continuation-in-part applications.

To the extent that Applicant has not addressed one or more assertions of the Examiner because the foregoing response is sufficient, this is not an admission by Applicant as to the accuracy of such assertions.

Please grant any extensions of time required to enter this response and charge any fees in addition to fees submitted herewith that may be required to enter/allow this response and any accompanying papers to our deposit account 02-3038 and credit any overpayments thereto.

Respectfully submitted,

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